



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 174997

PRELIMINARY RECITALS

Pursuant to a petition filed on June 17, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on July 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly denied the Petitioner's application for FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 16, 2016, the Petitioner completed an on-line ACCESS application for Foodshare benefits. (Exhibit 3, pgs. 22-34)

3. On June 20, 2016, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice, indicating that her application for benefits had been denied. (Exhibit 3, pgs. 35-39)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 17, 2016. (Exhibit 1)
5. Petitioner has a household of four people. No one is over age 60, blind or receiving disability income. (Testimony of Petitioner)
6. Petitioner pays rent in the amount of \$705.00 and has a heating expense. (Testimony of Petitioner)
7. Petitioner's 14 year-old child receives Social Security Surviving Child benefits, in the amount of \$1305.00 per month. (Exhibit 3, pg. 11; Testimony of Petitioner)
8. Petitioner receives monthly child support for two children, in the amount of \$64.29 each, for a total of \$128.58 per month in child support. (Testimony of Petitioner; Exhibit 3, pgs. 12 -14)
9. Petitioner's gross income from her [REDACTED] job fluctuates. Over six months, her bi-weekly paychecks have been as low as \$481.79 and as high as \$1,090.40, averaging \$654.34 per check. This works out to be:

$$\$654.34 \times 2.15 \text{ average bi-weekly pay periods per month} = \$1406.93 \text{ gross income}$$

(Exhibit 3, pg. 17)

10. In determining Petitioner's income from the [REDACTED], the agency looked at the two checks that immediately preceded her application, a check dated June 10, 2016, for \$525.92 and May 27, 2016, for \$580.32, which averages out as follows:

$$\$525.92 + \$580.32 = \$1106.24$$

$$\$1106.24 \div 2 = \$553.12 \text{ per bi-weekly paycheck}$$

$$\$553.12 \times 2.15 = \$1189.21 \text{ per month gross income}$$

(Exhibit 3, pg. 17 and 21)

DISCUSSION

To be categorically eligible, most households/food units must have income at or below 200% of the Federal Poverty Level (FPL). *FSH §4.2.1.1; 7 CFR 273.2(j)(2)*. "If the food unit's gross income goes over 200% of FPL, the case will close." *Id.* 200% of FPL for households with four people is \$4042 per month. *FSH §8.1.1.1*

The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1*. In calculating monthly income, a multiplier of 4.3 average weeks or 2.15 bi-weekly pay periods per month is used. *Process Help §16.4.1; 7 CFR 273.10(c)(2)*

Once a household passes the gross income test, the amount of FoodShare benefits is then determined using a net income calculation. *FSH at §4.6*

Petitioner's Gross Income

Over six months, Petitioner's bi-weekly paychecks have been as low as \$481.79 and as high as \$1,090.40. Because Petitioner's income fluctuates so widely, the agency really should have averaged her income:

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the applicant/member may use a longer

period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the food units anticipated income including fluctuations anticipated over the certification period. In any case, make every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

FSH §1.2.4.2

Looking at the 12 paychecks the Petitioner received in 2016 between January 3, 2016 and June 5, 2016, her gross monthly earned income averages out to be \$1406.94. However, the agency instead, used the standard protocol of averaging the Petitioner's two most recent paychecks. The agency calculated gross earned income of \$1,182.72. It is not clear how the agency came up with that calculation.

As discussed above, the two checks immediately preceding the Petitioner's application for benefits were a check dated June 10, 2016, for \$525.92 and a check dated May 27, 2016, for \$580.32. Thus, Petitioner's income averaged out as follows:

$$\$525.92 + \$580.32 = \$1106.24$$

$$\$1106.24 \div 2 = \$553.12 \text{ per bi-weekly paycheck}$$

$$\$553.12 \times 2.15 = \$1189.21 \text{ per month gross income}$$

\$1189.21 is still lower than taking a six month average of Petitioner's income.

Totaling all of the Petitioner's household income we have:

\$1189.21 earned income
 +\$1305.00 Surviving Child Social Security Income
 +\$128.58 Child Support income

\$2622.79 Total Gross Monthly Income

Petitioner's gross monthly income is below the 200% FPL income limit of \$4042 per month, so the Petitioner is categorically eligible for benefits.

The Petitioner argued that the daughter who receives social security benefits should not be included in her household. However, The Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FSH, §§3.3.1.1; 3.3.1.2 and 3.3.1.3.

Wisconsin uses the term "food unit" where the Federal Regulations use the term "household". Parents (biological, adoptive, or step) who live with their children who are under the age of 22, must be included

in the same household / food unit, even if they do not purchase and prepare meals together. 7 C.F.R. §273.1(b)(1); See also FSH §3.3.1.3.

Consequently, Petitioner's daughter and her income must be included in Petitioner's household.

Petitioner's Net Income

To determine net income, the following deductions are applied to gross income (FSH, at § 4.6):

- (1) a standard deduction –

This is \$155 per month for a household of 1-3 people,
\$168 for four people
\$197 for five people
\$226 for six or more people

7 CFR § 273.9(d)(1)

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 CFR § 273.9(d)(2);

For Petitioner this is $\$1189.21 \times .20 = \237.84

- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);

Petitioner is not entitled to this deduction, because there is no one in her household who is over age 60, blind, or receiving disability income.

- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and

Petitioner did not report any dependent care expenses.

- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5).

The heating standard utility allowance (HSUA) is \$458 per month.

There is a cap of \$504.00 on the shelter cost deduction, *unless* a household, like Petitioner's, has an elderly, blind or disabled member.¹

FSH, §§ 4.6.7.1 and 8.1.3.

¹ The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

Applying the deductions allowed under FSH, at § 4.6 to Petitioner's gross income we have the following net income calculation:

| | | | |
|------------------------------------|-----------|------------------------|-------------|
| Gross Income | \$2622.79 | Mortgage | \$705.00 |
| Earned Income Deduction | -\$237.84 | HSUA | +\$458.00 |
| Standard Deduction | -\$168.00 | 50% Net income | - \$1108.48 |
| No Medical Expenses exceeding \$35 | | | |
| No Dependent Care Expenses | | Excess Shelter Expense | \$54.52 |
| Net Income | \$2216.95 | | |
| Excess Shelter Expense | -\$54.52 | | |
| Total Net Income | \$2162.43 | | |

Households of four with net income of \$2162.43 are ineligible for FoodShare benefits. *FSH §8.1.2* As such, the agency correctly denied the Petitioner's application for benefits.

It should be noted that even if one used the agency's seemingly faulty calculation of \$1,182.72 for earned income, the Petitioner still would not receive any FoodShare benefits, because using that income, the benefit allotment works out to be \$2.00 and initial allotments of less than \$10.00 are not issued. (See Exhibit 3, p. 9; *FSH §7.1.1.1* and *§8.1.1.1*)

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's June 2016 application for FoodShare benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of August, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 9, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability